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GUEST EDITORIAL

Lucas Lixinski*

l.lixinski@unsw.edu.au
UNSW Sydney
Law School
Building F8, Union Road
UNSW Kensington Campus
UNSW Sydney NSW 2052, Australia

Hanna Schreiber**

hanna.s@uw.edu.pl
Institute of International Relations
University of Warsaw
ul. Żurawia 4
00-503 Warsaw, Poland

Intangible Cultural Heritage: Successes, Disappointments, and Challenges

In October 2003, the UNESCO General Assembly adopted the Convention for the Safeguarding of the Intangible Cultural Heritage (the 2003 Convention). In the less than fifteen years that have followed, the 2003 Convention has been ratified by 178 countries, making it the second most successful cultural heritage treaty in the world (after the 1972 World Heritage

* **Lucas Lixinski** is Associate Professor at the Faculty of Law of the University of New South Wales in Sydney (Australia). He holds a Ph.D. in Law from the European University Institute in Florence (Italy); LL.M. in Human Rights from the Central European University in Budapest (Hungary); and LL.B. from the Federal University of Rio Grande do Sul (Brazil).

** **Hanna Schreiber** is Assistant Professor at the Institute of International Relations, Faculty of Political Science and International Studies of the University of Warsaw (Poland). She holds a Ph.D. in the Humanities and three Master degrees in Law, Art History, and Political Science. The author wishes to acknowledge that her work on this issue and guest editorial was partially supported by the funding for young researchers' projects granted by the Faculty of Political Science and International Studies of the University of Warsaw (2017).

Convention). The examination of both the successes and shortcomings of this instrument comprises a significant part of this issue of the "Santander Art and Culture Law Review" (SAACLR).

This treaty was long in the making. Its inception dates back to the drafting of the 1972 World Heritage Convention, when a Bolivian diplomat pointed out the need to protect not only the physical marvels of the world, but also the immaterial manifestations of human civilization. This idea underwent multiple iterations and slowly matured over the years, until it came to fruition on 17 October 2003.

During its maturation, the idea of protecting intangible heritage acquired unique dimensions, which shifted the direction and development of a great deal of the international language concerning cultural heritage. We are thus moving away from physical remnants and towards living cultures; from States toward communities of practice; from preservation to safeguarding; and from Western-centric appreciations of "Outstanding Universal Value" towards culturally-sensitive engagements which represent all peoples. In short, the 2003 Convention contains elements that can turn international heritage law on its head.

The ideas underlying the 2003 Convention have long had impacts beyond the immediate scope of application of the treaty: the 1972 World Heritage Convention's Operational Guidelines have long incorporated the idea of intangible values associated with tangible sites, and opened up a dialogue about the way in which we understand and appreciate culture. Now that the 2003 treaty is in effect and has a firm role in the international legal discourses surrounding heritage, it is contributing to the deepening of the changing perceptions of heritage and its role in society.

The legal interest in intangible cultural heritage has facilitated thinking about the 2003 Convention in its own terms, and shifted its focus to foregrounding other legal regimes that affect living cultures (particularly intellectual property law). This SAACLR issue contributes primarily to the general analysis of the successes, disappointments, and challenges of the 2003 Convention, asking questions that can help us critically assess whether the promises of this treaty have been or can still be fulfilled, and the way forward in thinking about heritage not as something to be gazed at from the outside and in awe of its intrinsic value, but rather as an integral part of people's group identity, valuing heritage relationally and examining the way it contributes to the shaping of identity.

Hence, the keywords for this issue are not only "intangible cultural heritage" but also "World Heritage", "safeguarding", "communities", "sustainable development", and "human rights". At the same time, they also include "armed conflict", "cultural politics", "utilitarianism", and "soft power". When discussing its successes, one must admit, following Ahmed Skounti, that the 2003 Convention is one of the most powerful normative instruments of UNESCO in the fields of culture and cultural heritage, and has given birth to what he proposes calling an "Intangible Cultural Heritage System": a constellation of actors on the local, national, and international levels who contribute, in different ways, to its implementation. The

evolution of this system, rooted in the protection of traditional culture and folklore, is presented here by Janet Blake. And although from today's perspective it seems to have been inevitable that the 2003 Convention had to appear in the international cultural heritage law sooner or later, its road to final adoption was quite complicated due to the existing links and/or overlaps with the World Heritage regime and the instruments of the World Intellectual Property Organization. An enormous change in the philosophy of thinking about intangible cultural heritage thus had to take place during this process. The central elements of this change are encapsulated in the new language of safeguarding heritage (of the present), as opposed to the prevailing paradigm of preserving heritage (of the past). The question posed in this issue by Tone Erlien and Egil Bakka is whether and how these two paradigms can work together and support each other, especially with respect to museums.

This new language of safeguarding continually refers to "communities, groups and individuals", to "intergenerational transmission", and to "practices and rituals". It has "colonized" the contemporary cultural heritage discourse and created an "intangible" but audible and palpable trend towards crossing the existing legal borders and conceptual boundaries that have been disjointing cultural heritage regimes (as presented by Marijke Bassani based on the example of indigenous heritage). The discussion concerning intangible heritage in the context of armed conflicts is also a good example of this pervasiveness. This topic is addressed in this issue by Kalliopi Chainoglou. She presents the intersection of the 2003 Convention with other international legal regimes, especially the humanitarian law rules – as enshrined in the 1949 Geneva Conventions and their Additional Protocols – and international human rights law.

One may ask what have been the main disappointments that accompany the joy from the birth of this "Benjamin", a current "favourite child" of international cultural heritage law. The answer is bittersweet but simple. Despite the new language of safeguarding, it is still centred very much around the State. And when the State is taken into consideration and one begins to analyse the international race for inscriptions – it becomes very much about the State's visibility, viability, and visitability, as discussed in this issue by Marc Jacobs, who uses the case study of Vietnam. Or in other cases it is about national pride and internal policy goals, as presented by Marta Tomczak using the example of China.

So, is there anything that can be done on the part of UNESCO about these (and other) disappointments? Yes and no. Yes, because UNESCO has made efforts to integrate the work on the heritage treaties, although they could have gone further by now. The possibilities of building bridges between UNESCO's cultural conventions are analysed by Katarzyna Zalasińska on the example of the "sister treaty" – the 1972 World Heritage Convention. While a holistic approach to heritage conservation is one issue, the full engagement of communities in the management processes is a different one. All things considered, the answer can thus also be "no". UNESCO is an international organization governed by States, and the way in which

the 2003 Convention has evolved and adapted to the current state of international affairs is mostly a result of States' actions (or inactions). Hence, the constant rearrangement of the relationship between the international and the domestic spheres poses an ongoing challenge, particularly inasmuch as the domestic sphere is still the only filter through which communities have any real access to the 2003 Convention regime. The question is thus: How can we assure that communities, given their key role in safeguarding, are closely involved and integrated into the way of thinking about and implementing the treaty? The issue of how they may interpret and use the treaty is also a matter of some controversy, addressed in this issue by Tsehaye Hailemariam based on the example of cockfighting in the Philippines and the arguments raised by animal rights groups.

The domestic legal perspective is taken under scrutiny by Anita Vaivade and Noe Wagener. The authors and contributors of the French-Latvian project 'Osmose' present the pitfalls related to studying national laws on the safeguarding of intangible cultural heritage. On the one hand, they claim that it would be an error to think that one starts from nothing and that an appropriate intangible cultural heritage law still remains to be written in the vast majority of States. On the other hand, it would also be a mistake to create artificial continuities, with more or less assumed political implications contained in the legislation of yesterday and today, which in fact often do not claim to be concerned with intangible cultural heritage.

As a cherry on top of the cake – or even two cherries – we have the pleasure to present to the reader with two interviews given by Cécile Duvelle and Mechtild Rössler, both highly engaged in the UNESCO cultural heritage system. They discuss the need to keep the credibility of the 2003 and the 1972 Conventions by avoiding the trap of over-politicizing and distorting their initial aims and values. Whether we can cope with this challenge depends very much on us all, as is underlined by Cécile Duvelle. We sincerely hope that this issue will enhance the awareness of these challenges in both our intangible cultural heritage international community, as well as in our local heritage communities. And we invite everyone to participate in the intellectual exercise of examining the possible scenarios for the development of the 2003 Convention in the next decade.